

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 CATHERINE R. SANDOVAL,

11 Plaintiff/Petitioner,

12 v.

13 HARTFORD UNDERWRITERS  
14 INSURANCE COMPANY,

15 Defendant/ Respondent.

Case No. 2:10-cv-01798-KJD-RJJ

**ORDER**

16  
17 Presently before the Court is Defendant's Motion to Dismiss Plaintiff's extracontractual  
18 claims (#4). Plaintiff filed a Response in opposition (#7) to which Defendant replied (#9).

19 **I. Procedural History**

20 Plaintiff filed the present Complaint (#1-1) against her insurance company, Hartford  
21 Underwriters Insurance Company ("Hartford"), asserting three (3) claims for relief: (i) Breach of  
22 Contract; (ii) Violation of Nevada Unfair Claims Practices Act; and (iii) Breach of Implied Covenant  
23 of Good Faith and Fair Dealing. Plaintiff also seeks punitive damages. Plaintiff's claims arose from  
24 Defendant's denial of Plaintiff's insurance claim after two car accidents in which Plaintiff asserts she  
25 suffered numerous injuries. Defendant now seeks to dismiss claims (ii) and (iii) as well as Plaintiff's  
26 claim for punitive damages.

## **II. Motion to Dismiss Standard**

Pursuant to Fed. R. Civ. P. 12(b)(6), a court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." A properly pled complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise above the speculative level." Twombly, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." Iqbal, 129 S. Ct. at 1949 (internal citation omitted).

In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, the Court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. Id. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. Id. at 1949. Second, the Court must consider whether the factual allegations in the complaint allege a plausible claim for relief. Id. at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not shown—that the pleader is entitled to relief." Id. (internal quotation marks omitted). When the claims in a complaint have not crossed the line from conceivable to plausible, plaintiff's complaint must be dismissed. Twombly, 550 U.S. at 570.

## **III. Extracontractual Claims - Claims (ii) and (iii) and Punitive Damages**

Defendant asserts that Plaintiff's allegations only support a breach of contract claim and Plaintiff has not alleged sufficient facts to state claims for violation of the Nevada Unfair Claims

1 Practices Act, breach of covenant of good faith and fair dealing, and punitive damages. Plaintiff  
 2 contends that the standard for dismissal is extremely rigorous and Defendant has failed to  
 3 demonstrate that dismissal is appropriate. Additionally, Plaintiff requests that if dismissal is granted  
 4 that the Court also grant her leave to amend.

5 A. Violation of Nevada Unfair Claims Practices Act and Breach of Covenant of Good Faith  
 6 and Fair Dealing - Claims (ii) and (iii)

7 Defendant argues that Plaintiffs' allegations concerning Claims (ii) and (iii) are only  
 8 formulaic recitations of the elements and she provides no relevant factual allegations to support her  
 9 claims.<sup>1</sup> The Court agrees. Plaintiff's allegations are legal conclusions which quite obviously lack  
 10 requisite facts.

11 Under the violation of Nevada Unfair Claims Practices Act claim, Plaintiff alleges that  
 12 Defendant "violated subsections b, c, d, e, and n of N.R.S. 686A.301(1)," and that the statutory  
 13 violations "were done willfully, maliciously, oppressively, with the conscious disregard for the  
 14 Plaintiff's rights and with the intent to vex, annoy, harass and injure the Plaintiff." Plaintiff offers no  
 15 facts alleging how Defendant violated N.R.S. N.R.S. 686A.301(1)<sup>2</sup> and therefore, this claim must be  
 16 dismissed.

17 Under the Breach of Covenant of Good Faith and Fair Dealing Claim, Plaintiff alleges that  
 18 Defendant "failed to deal fairly and in good faith with the Plaintiff by refusing to compensate the  
 19 Plaintiff for a loss covered by the [insurance contract]." Refusing to compensate for a loss covered  
 20 by the insurance contract is a factual allegation for breach of contract, not breach of covenant of good  
 21 faith and fair dealing. See, Pioneer Chlor Alkali Co. v. Nat'l Fire Ins. Co., 863 F.Supp 1237, 1242  
 22 (D.Nev. 1994) (noting that "the insurer is not liable for [tortious] bad faith for being incorrect about  
 23 policy coverage as long as the insurer had a reasonable basis to take the position that it did").

---

24  
 25 <sup>1</sup>Plaintiff did not directly respond to this assertion by Defendant, but rather retold the series of events  
 that lead up to the present law suit and contended that the standard for dismissal is rigorous.

26 <sup>2</sup>The only facts mentioned throughout the Complaint regard the alleged breach of contract.

1 Plaintiff offers no facts alleging how Defendant breached a covenant of good faith and fair dealing.  
2 Accordingly, this claim must be dismissed.

3 B. Punitive Damages

4 Defendant's conduct must be oppressive, fraudulent, or malicious in order for punitive  
5 damages to be assessed. NRS 42.005. Punitive damages are improper when a defendant can only be  
6 held liable for breach of contract. Insurance Co. of the West v. Gibson Tile Co., Inc., 122 Nev. 455,  
7 458 (2006). Here, the only claim surviving the motion to dismiss is the breach of contract claim and  
8 therefore, the most Defendant can be held liable for is breach of contract. Accordingly, punitive  
9 damages would be improper and Plaintiff's claim for punitive damages is dismissed.

10 IV. Conclusion

11 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss  
12 Extracontractual Claims (#4) is **GRANTED**;

13 **IT IS FURTHER ORDERED** that Plaintiff is granted leave to file a second amended  
14 complaint within fourteen (14) days.

15 DATED this 14<sup>th</sup> day of July 2011.

16  
17 

18 \_\_\_\_\_  
19 Kent J. Dawson  
20 United States District Judge  
21  
22  
23  
24  
25  
26